

Order

Entered: June 11, 2004

Michigan Supreme Court
Lansing, Michigan

121598

CASTLE INVESTMENT COMPANY,
Plaintiff-Appellant,

v

CITY OF DETROIT,
Defendant-Appellee.

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 121598
COA: 224411
Wayne CC: 98-836330-CZ

After granting leave to appeal, 468 Mich 869 (2003), this Court has carefully considered the written and oral arguments of the parties. On order of the Court, for the reasons set forth below, we REVERSE the judgment of the Court of Appeals, and we REMAND this case to the Wayne Circuit Court for further proceedings.

In 1976, the city of Detroit adopted ordinance 124-H, which required inspection of buildings and issuance of a certificate of approval before certain real property could be sold or transferred in the city. Section 26-3-4 of the ordinance (formerly section 12-7-4) provided that the certificate of approval shall be issued only after the city had inspected a building and found it to be in conformance with the guidelines described in section 26-3-6 of the ordinance (formerly section 12-7-6). That section, in turn states, "The guidelines shall not be effective until approved by city council." It is undisputed that the city council never approved the guidelines.

Plaintiff brought this action in 1998, claiming that the ordinance was unenforceable because the guidelines had never been approved. The circuit court granted summary disposition to defendant. The Court of Appeals affirmed in an unpublished opinion. *Castle Investment Co v Detroit* (Docket No. 224411, released March 19, 2002).

An examination of the ordinance leads inescapably to the conclusion that the certificate-of-approval provisions of ordinance 124-H, as amended, cannot lawfully be enforced because the city council never approved the inspection guidelines. Thus, there are no guidelines and, without those guidelines, the city is unable to issue a certificate of approval. For this reason, the circuit court erred in failing to enjoin enforcement of the certificate-of-approval provisions of the ordinance.

The circuit court and the Court of Appeals held that the defendant was entitled to summary disposition on the ground of laches. We reject that analysis. Without expressing any opinion on the validity of laches as a defense to a challenge to the enactment of an ordinance, we determine that defendant did not meet the standard for

summary disposition. Defendant did not show that the delay in bringing the action resulted in the kind of prejudice that would support a laches defense.

We remand this case to the Wayne Circuit Court for further proceedings in accordance with this order. On remand, the Wayne Circuit Court shall enjoin further enforcement of the certificate-of-approval provisions of the ordinance, although its order should recognize the continuing authority of the city council to approve regulations and prospectively resume enforcement of the certificate-of-approval provisions. We offer no opinion regarding whether, on remand, the Wayne Circuit Court should grant further relief to plaintiff.

We do not retain jurisdiction.

Weaver, J., concurs and states:

I concur with the order remanding this case to the Wayne Circuit Court for further proceedings. I write separately to note that, given the conclusion that the certificate-of-approval provisions of the ordinance cannot lawfully be enforced, the parties and court may find *Beachlawn Building Corp v St Clair Shores*, 376 Mich 261 (1965), and *Beachlawn Building Corp v St Clair Shores*, 370 Mich 128 (1963), relevant to the issue whether plaintiff is entitled to damages.

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I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 11, 2004

Corbin R. Davis
Clerk